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Held at the Palais des Nations, Geneva,
on Wednesday, 11 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.349/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of Yugoslavia (CAT/C/16/Add.7) (continued)

1. At the invitation of the Chairman, the members of the Yugoslav delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation to reply to the questions raised by the members of the Committee at the previous meeting.

3. Mr. DJORDJEVIC (Yugoslavia) said that the Yugoslav authorities had embarked upon the preparation of the initial report in the year following the ratification of the Convention against Torture in 1991. Unfortunately, they had been prevented from submitting the report in due time by various major developments, including the proclamation of independence of three Republics, the civil war in Bosnia and in Croatia, and the sanctions imposed by the international community. The report made no mention of the situation in Kosovo-Metohija because, at the time of completion of the report in late 1997, the events in that region had not yet escalated to the extent subsequently experienced.

4. The Yugoslav police had been forced to take legitimate action in response to terrorist acts carried out by Albanian separatists armed by the Albanian Government. That was not an international armed conflict, and therefore the provisions of international humanitarian law could not be invoked, and the situation did not fall within the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia whose mandate was to prosecute persons responsible for violations of humanitarian law in Bosnia and in Croatia. Moreover, the international community had condemned the terrorist acts committed by the Albanian separatists. The Yugoslav Government was ready to cooperate with the Tribunal but did not recognize its jurisdiction in all the areas covered by its mandate in regard to events in Kosovo-Metohija. The Yugoslav authorities had instituted inquiries into the terrorist acts that had been committed and legal proceedings would be taken against those responsible, under article 16 of the Yugoslav Penal Code. The trials would be held under conditions of utmost transparency and the representatives of the International Committee of the Red Cross would be able to communicate freely with persons awaiting trial. The Yugoslav authorities had invited foreign forensic doctors to work with national experts in elucidating those events, and all cases would be dealt with in compliance with international rules. On 6 November 1998, the authorities had concluded an agreement regarding the status of the Belgrade field office of the Office of the United Nations Commissioner for Human Rights and were fully prepared to collaborate with the field office and to discharge all their international obligations.

5. Mrs. SOKOVIC (Yugoslavia), dealing first with the questions raised in connection with the draft code of criminal procedure, said that its provisions sought primarily to guarantee the right of all citizens to a fair trial by a competent and independent court. The right to a defence was embodied in the Constitution and the objective of the legislature in drawing up the draft code

had been to ensure that that right applied at all stages of criminal proceedings and to remove any possible remaining restriction on its exercise. A person in police custody would be guaranteed the right to communicate with counsel, the right to inform a member of his family of his arrest and the right not to be obliged to testify against himself. The draft criminal code would also prohibit the police thenceforth from ordering detention, and pre-trial detention would be justified only by the requirements of the investigation. Under the new code, the examining magistrates - and no longer the police authorities - would be responsible for initiating criminal inquiries. The use of non-admissible evidence during a trial would be prohibited and, consequently, articles 84, 85 and 86 of the existing Code of Criminal Procedure had been revoked. In addition, with the same aim of guaranteeing the competence, independence and impartiality of the courts, the draft code provided for the extension of the conditions of immunity of judges and the election of magistrates by the People's Assembly. In future, judges could not be removed, except in situations provided for by the law relating to the courts, and they would no longer be permitted to occupy political or social positions.

6. In regard to the implementation of the Convention, the fact that the definition of torture, as it appeared in article 1, had not been incorporated in domestic law did not mean that the Convention was not being applied. Under Yugoslav law, extremely severe penalties existed for arbitrary arrests carried out by State officials (five years' imprisonment), ill-treatment and failure to respect dignity (three months' to five years' imprisonment) and cruel or degrading treatment (one to eight years' imprisonment). The use of coercion to extract confessions and action by members of the medical profession with a view to influencing the accused were strictly prohibited. The use of force in prisons was stringently governed by law (exceptional situations and authorized means) and subject to monitoring by the courts and by Parliament. Anyone who considered that he had been the victim of an abuse by a State official could request protection from the Supreme Court.

7. In regard to the implementation of article 2 of the Convention, no exceptional circumstance or situation could justify the use of torture or cruel, inhuman or degrading treatment. However grave the situation, the institutional and legal structures of the State continued to operate. Any public official guilty of any act of the type referred to in article 1 of the Convention, in obedience to a superior order, was punishable by law, as was his superior.

8. The right of the victim of an act of torture to obtain redress (article 14 of the Convention) was embodied in the Code of Criminal Procedure and the victim might be compensated both by the State and by the perpetrator of the offence. Lastly, a new law on the execution of criminal sanctions had come into force in early 1998; it sought to humanize prison conditions, which in the future would be strictly monitored by a unit of the Ministry of Justice. Prisoners would be visited once a week by a magistrate. Any information that it had not been possible to provide at the current meeting would be included in Yugoslavia's next report to the Committee.

9. Mr. KRSTIC (Yugoslavia) said that all Yugoslav citizens enjoyed equal rights and equal treatment under the law, that their constitutional rights

were guaranteed and that they enjoyed personal and material protection. Any public official who had exceeded his rights or abused his position was liable to disciplinary measures. Between 1993 and 1998, the Ministry of the Interior had brought 13 criminal cases against 17 law enforcement officers for abuse of power, arbitrary arrest or indecent assault. All those found guilty had been sentenced to between three months and six years' imprisonment.

10. The members (judges and prosecutor) of the disciplinary court of first instance, attached to the Ministry of the Interior, who were appointed by the Government, were selected from among the eminent jurists employed by the Ministry of the Interior, or from among members of the judicial system or social workers. Appeals might be lodged with an ordinary court against its decisions.

11. As to raising the awareness of law enforcement officers concerning the problem of torture as defined in article 1 of the Convention, officials of the Ministry of the Interior were given vocational training to supplement the knowledge they acquired in the course of their daily work. In addition, daily courses were given in police schools. Moreover, in September 1998, the ICRC had organized a seminar on humanitarian law for police officers and members of the armed forces. The Ministry of the Interior had been highly satisfied with that collaboration with the ICRC, which had been provided with all available information regarding, in particular, kidnapped or disappeared persons.

12. A number of human rights organizations had addressed letters to the Yugoslav Permanent Mission in Geneva claiming that members of the police had engaged in discrimination against the national Albanian minority in Kosovo and had subjected some of its members to torture. Those allegations referred specifically to ill-treatment, extraction of confessions, arbitrary detention and illegal searches or raids. In many cases, torture victims were said to have been political activists, minors, women or even elderly people belonging to the Albanian national minority. The Ministry of the Interior had investigated every case and had established that, in many instances, the individuals involved had been found guilty and sentenced by the relevant courts in accordance with their degree of responsibility and in compliance with the law. In actual fact, some of the persons in question had not been law enforcement officers.

13. One of the prisoners who was alleged to have been tortured had attacked policemen on three occasions on 2 July 1998, and had been convicted of terrorist activities. Shortly after his imprisonment, he had suffered cardio-vascular problems and had been transferred to Pristina Hospital, where he had died from his illness on 10 August, as stated in the death certificate. The lawyer Destan Rukiqui had been sentenced by the district court to a prison term of 60 days (subsequently reduced to 30 days) pursuant to a complaint submitted by policemen regarding a breach of the peace on the premises of a district court.

14. On the subject of disappearances, the Ministry of the Interior of the Republic of Serbia had reported to the ICRC the disappearance of 126 individuals and the Ministry of Justice had listed 927 cases that had been brought against members of the Albanian national minority suspected of acts of terrorism, 490 of whom were on the run.

15. Mr. HODZA (Yugoslavia), replying to a question on constitutional remedies and the system of human rights protection, said that the Yugoslav Constitution guaranteed fundamental human rights and freedoms and the rights of citizens. The effective protection and exercise of the rights listed was guaranteed where necessary by special laws. Individual rights enjoyed legal protection based on the right to apply to civil or criminal courts against any individual act, for instance by a public official, which infringed those rights, or to administrative courts against any illegal decision. In addition to such ordinary legal protection, the Yugoslav legal system provided for specific legal protection in the form of constitutional remedies which represented an extraordinary means of protecting human rights. The Federal Constitutional Court ruled on such proceedings (in 1998, 41 such cases had been brought, and they were still under investigation).

16. Military tribunals also had some jurisdiction in the area of protecting rights and freedoms of individuals. They were part of the judicial system and were subject to the same basic rules and applied the same procedures as the courts of general jurisdiction. They existed both in peacetime and in wartime and were competent to try offences by members of the military or prisoners of war, as well as offences by civilians serving in the army when committed in the exercise of their functions.

17. Frequent contacts existed with the Roma and no case of torture involving them had been reported. Problems certainly existed, but every effort was being made to improve their situation, particularly in the sphere of education.

18. The CHAIRMAN thanked the Yugoslav delegation. Returning to the case of the lawyer Destan Rukiqui, he repeated his question as to why the latter had not been permitted to take notes on the documents in his client's file. Further information was also required regarding the ill-treatment to which Destan Rukiqui was said to have been subjected.

19. Mr. EL MASRY said that, contrary to what had been stated by the representative of Yugoslavia, the jurisdiction of the International Criminal Tribunal was not confined to events in Bosnia and Herzegovina and in Croatia. It had jurisdiction to try the perpetrators of violations committed throughout the territory of the former Yugoslavia since 1991 and, hence, also in Kosovo. He wished to know to what extent Yugoslavia, which claimed to cooperate with the Tribunal, likewise cooperated with the forensic experts who had gone to the Federal Republic of Yugoslavia and whether a report had been prepared. If such a report had not yet been completed, it would be useful to know whether the experts in question had been able to view the mass graves which were said to exist within the territory of the Republic.

20. As many countries recognized, the Kosovo conflict was internal in nature and, as such, was subject to the provisions of article 3 of the fourth Geneva Convention.

21. Mr. MAVROMMATIS requested further information on the procedure for appointing and removing judges and on the grounds for removal, since that was one of the yardsticks for measuring the degree of independence of the judiciary.

22. Mr. SØRENSEN, noting that the specific questions he had asked had not been answered, expressed the hope that they would be taken into consideration in the second periodic report of Yugoslavia.

23. Mr. DJORDJEVIČ (Yugoslavia), replying to Mr. El Masry's comments, agreed that the International Criminal Tribunal was mandated to prosecute alleged perpetrators of serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991. But the Tribunal had been established in the wake of the civil war in Bosnia and Herzegovina and Croatia. To interpret the events in Kosovo as an internal armed conflict was incorrect. Yugoslavia regarded those events as a domestic matter and not a conflict representing a threat to international peace and security. The Security Council therefore had no jurisdiction in the case, and neither had the International Criminal Tribunal. Be that as it might, Yugoslavia's cooperation with the International Criminal Tribunal was improving; the staff of the Belgrade office working together with the Tribunal had recently been strengthened, and archives, reports and information of all kinds were regularly sent to the Tribunal at The Hague.

24. On the question concerning legal experts, he quoted an extract from the report of the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia submitted to the United Nations General Assembly on 30 October 1998, which indicated that forensic experts working under the auspices of the European Union were assisting Yugoslav experts but were also authorized to carry out independent investigations.

25. Ms. SOKOVIČ (Yugoslavia), reverting to the subject of the draft code of criminal procedure currently in preparation, said that the code was expected to be adopted in 1999; however, that certainly did not mean that acts of cruel or inhuman treatment would remain unpunished in the meantime. Under the new law, acts of ill-treatment, which were not specifically mentioned in the law currently in force, would constitute criminal offences. A provision to the effect that testimony obtained by coercion, threat or medical methods of any kind could on no account be used in a criminal trial already existed and would be maintained.

26. In Yugoslav law, judges, assessors and chairmen of tribunals were elected and dismissed by the Federal Assembly. Judges held office on a permanent basis and relinquished it only of their own volition or on reaching retirement age. Judges were not allowed to hold posts of political responsibility, but could be relieved of their duties by the Federal Assembly in order to do so, or for health reasons, or else because they had been sentenced to six months' imprisonment or longer for a criminal offence or found guilty of a criminal offence which made them ineligible for the exercise of their functions. Such ineligibility was not established by subjective criteria but by clearly defined indicators.

27. Mr. KRSTIČ (Yugoslavia), replying to the question concerning the defence counsel of the chief of the Kosovo Democratic League, said that the judge had agreed to the lawyer's request to examine his client's file. When the lawyer had begun to copy a statement which was on the file, the judge had reprimanded him. The lawyer had then conducted himself in an improper manner and the situation had deteriorated.

28. The CHAIRMAN thanked the Yugoslav delegation for doing its best, within the short time allowed it, to answer the many questions raised by Committee members. The suggestion made by Mr. Sørensen seemed sound: the reasons for the late submission of the initial report were understandable and it was clear that, in consequence, the second periodic report would also be submitted somewhat late; logically, the Yugoslav authorities should therefore endeavour to include in it the answers to some of the questions raised to which the delegation had found it difficult to reply on the spot. In particular, with reference to the allegations of Amnesty International concerning certain specific cases, it would be interesting to learn, for example, whether inquiries had been opened and if so, whether steps had been taken to punish the policemen concerned.

29. Mr. HODZA (Yugoslavia) thanked the Committee for its attentive consideration of his country's report and stated that his Government, wishing to fulfil the obligations it had undertaken, would try to include the information requested in its second periodic report.

30. The CHAIRMAN invited the delegation to return at a future meeting in order to hear the conclusions and recommendations of the Committee.

31. The Yugoslav delegation withdrew.

The meeting was suspended at 4.25 p.m. and resumed at 4.40 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Appointment of country rapporteurs and alternate country rapporteurs for reports of States parties scheduled for consideration in 1999

32. The CHAIRMAN invited members of the Committee to come forward to serve as country rapporteurs and alternate country rapporteurs for reports submitted to the Committee by States parties under article 19 of the Convention. He recalled that some members did not want to serve as country rapporteurs for particular States, but pointed out that it was not desirable that Committee members should always have the same countries allocated to them. He also reminded the Committee that reports were considered in the order in which they were received, unless a State requested the deferment of the date of consideration of its report - say, for religious reasons or to enable translation deadlines to be met.

33. Mr. EL MASRY said that it would be helpful if the secretariat could inform country rapporteurs shortly before the session of the date on which they would be invited to introduce the reports for which they were responsible.

34. Mr. BRUNI (Secretary of the Committee) said that all documents for the session, including a list of the country rapporteurs and alternate country rapporteurs who would be called upon to speak, were sent to Committee members a month before the opening of the session.

35. The CHAIRMAN said that some members sometimes received the documents with considerable delay. It would be useful if the list could be faxed to members in advance of the session. The secretariat would take care of the point.

36. Taking into account the availabilities and constraints of all members, he proposed the following distribution of tasks:

Mr. Yakovlev to be country rapporteur, and Mr. Burns alternate rapporteur, for the initial report of the former Yugoslav Republic of Macedonia; Mr. Mavrommatis to be country rapporteur and Mr. El Masry alternate country rapporteur for the second periodic report of Mauritius; Mr Sørensen to be country rapporteur and Mr. Yakovlev alternate country rapporteur for the second periodic report of Bulgaria; Mr. González Poblete to be country rapporteur and Mr. Silva Henriques Gaspar alternate country rapporteur for the initial report of Venezuela; Mr. El Masry to be country rapporteur and Mr. Mavrommatis alternate country rapporteur for the third periodic report of Italy; Mr. Silva Henriques Gaspar to be country rapporteur and Mr. Camara alternate country rapporteur for the second periodic report of Luxembourg; Mr. Sørensen to be country rapporteur and Mr. Yu Mengjia alternate country rapporteur for the third periodic report of the Libyan Arab Jamahiriya; Mr. Camara to be rapporteur and Mr. Silva Henriques Gaspar alternate country rapporteur for the second periodic report of Morocco; Mr. Burns to be country rapporteur and Mr. Yu Mengjia alternate country rapporteur for the second periodic report of Liechtenstein; and Mr. Burns to be country rapporteur and Mr. Mavrommatis alternate country rapporteur for the third periodic report of Egypt.

37. It was so decided.

38. Mr. EL MASRY asked whether any task was to be entrusted to the future Committee member replacing Mr. Zupančič.

39. The CHAIRMAN said that it was desirable for new members to become associated with the work of the Committee very gradually. At a meeting of chairpersons of human rights treaty bodies it had been recommended that a day should be set aside early on in the session in order to initiate new members to the working methods of the body they were joining.

40. Mr. SØRENSEN said that it might be appropriate, for example, to ask the newcomer to serve as country rapporteur for Liechtenstein.

41. The CHAIRMAN agreed that the new member might be asked to take on that task.

The first part (public) of the meeting rose at 5 p.m.